S.B. Civil Writ Petition NO.1927/2005
Johara Khatun
vs
Mohd. Rafique & Ors.

DATE OF ORDER : - 12.5.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.DK Gaur, for the petitioner.
Mr.Vinay Jain, for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 12th April, 2005 by which the trial court refused to grant opportunity to produce three witnesses named in the application dated 17.12.2004.

It appears that the case was fixed for the evidence of the defendant on 17.12.2004 as cross-examination of the defendant was not completed by the learned counsel for the plaintiff on 16.10.2004. On the same day, i.e., on 17.12.2004, learned counsel for the defendant-petitioner submitted an application before the trial court stating therein that petitioner-defendant' witnesses Smt.Johara Khatun, Mohd. Anwar and Atta Mohd. came in court at 11.00 AM but because the petitioners' advocate was busy in another court,he could not complete the evidence of the defendant. The petitioner's application was taken on record on

17.12.2004 and court ordered to place the application on 12.1.2005. ON 28.2.2005, the trial court decided the petitioner's application dated 17.12.2004 and after observing that several opportunities were granted to the petitioner-defendant for evidence and, thereafter, the evidence was closed, therefore, there arises no question of reopening of the evidence of the defendant.

It appears from the above facts itself that the witnesses were present on 17.12.2004, but counsel was not present, therefore, the evidence was not recorded. Since the application has been filed on the same day, i.e.,on 17.12.2004, therefore, the trial court could have bound down the witnesses for next day, but instead of doing so, the trial court kept the application for evidence of the defendant-petitioner pending.

Be that as it may, in the above facts when the witnesses were present before the court and now the petitioner is ready to produce above three witnesses only in his evidence and ready to complete the evidence on petitioner's part in one day,therefore, the petitioner is granted one more opportunity to produce above three witnesses only in one day on payment of cost of Rs.2,000/- to the plaintiff, which may be paid to the plaintiff or deposited in court within 15 days from today.

The trial court may fix a convenient date for the evidence of the witnesses of the petitioner-defendant and the petitioner shall not be granted and more opportunity for producing the evidence or opportunity to produce any other witnesses except named in the application.

In view of the above, the writ petition of the petitioner is allowed as mentioned above. The stay petition has become infructuous. Hence, the stay petition is dismissed.

(Prakash Tatia), J.

c.p.goyal/-